

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

November 15, 2012

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Patrick Brewer (arrived at 1:40); Mike Cravens; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; Lynn Roche-Phillips; and William Wilson (arrived at 2:15; left at 4:09). Absent were Will Berkley, Carla Blanton, and Karen Mundy.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 6-0 (Berkley, Blanton, Brewer, Mundy, and Wilson absent) to approve the minutes of the October 11, 2012, Planning Commission meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 1, 2012, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Frank Penn, Mike Owens, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Dave Jarman, Denice Bullock, Barbara Rackers, Cheryl Gallt, Cindy Deitz and Kenzie Gleason, as well as Captain Charles Bowen, Division of Fire & Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, November 1, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

Note: Mr. Brewer arrived at this time.

1. **MULLIS FAMILY, LLC, ZONING MAP AMENDMENT & LEESTOWN OFFICE PARK, LOTS 4 & 5, ZONING DEVELOPMENT PLAN**

- a. MAR 2012-15: MULLIS FAMILY, LLC (12/30/12)* - petition for a zone map amendment from a Professional Office (P-1) zone to a High Density Apartment (R-4) zone, for 5.77 net (9.93 gross) acres, for property located at 161 and 181 Leestown Center Way.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 6) recommends Professional Services future land use for the subject property. The petitioner proposes an apartment complex with 84 dwelling units and associated off-street parking.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested High Density Apartment (R-4) zoning is appropriate and the Professional Office (P-1) zone is now inappropriate, for the following reasons:
 - a. Dwelling units are a permitted use in the P-1 zone for the second floor and above, if professional office uses are proposed on the first floor; thus, some level of residential development would be allowed under the current zoning. However, such a mixed-use project would not be feasible at this location, given the property's limited access and the lack of success for existing office space in the immediate vicinity.
 - b. The existing P-1 zone is not appropriate because of the limited access to the property. While site access was significantly improved with the construction of Leestown Center Way and the ability to access the property from two directions was increased, the access changes do not appear to have been substantial enough to foster a successful Professional Office Park at this location. Acknowledging the previous Comprehensive Plan land use recommendations from 1980 until 1996 of High Density Residential land use, by rezoning the subject property to R-4, appears to be appropriate.
 - c. The proposed R-4 zone and multi-family residential development are very compatible with the surrounding area. The largest land uses in the immediate area are Leestown Middle School and Bluegrass Community and Technical College, both of which are highly compatible with the proposed residential development. Higher density residential uses are also compatible with a limited access expressway like New Circle Road.
 - d. The proposed R-4 zone for a high density residential land use would be an appropriate transition between, or neighbor to, professional office and educational facilities, as it can improve non-vehicular connections and reduce vehicle trips between complementary land uses.
 2. The 2012 Comprehensive Plan's Goals and Objectives are supportive of the proposed zone change request. The Plan's mission statement seeks to "provide flexible planning guidance;" and the proposed change is supported by Theme A.1.b., which encourages housing near employment and commercial areas, as well as Theme A.2.a., which encourages identifying opportunities for appropriate infill that respects the area's context and design features.
 3. This recommendation is made subject to approval and certification of ZDP 2012-93: Leestown Office Park, Lots 4 & 5 (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2012-93: LEESTOWN OFFICE PARK, LOTS 4 & 5 (AMD) (12/30/12)* - located at 161 and 181 Leestown Road.
(Banks Engineering)

Note: The purpose of this amendment is to add 84 apartment units and revise off-street parking.

The Subdivision Committee Recommended: Postponement. There were questions regarding compliance with the parking and open space requirements of the Zoning Ordinance.

Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewer information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and arterial screening.
5. Urban Forester's approval of tree inventory map (Lots 4 & 5).
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Clarify office and apartment parking requirements in site statistics.
8. Denote location of parking in the R-4 to be used to satisfy the P-1 parking requirements.
9. Denote: Board of Adjustment approval of a conditional use for P-1 parking in the R-4 zone will be required prior to approval of a Final Development Plan.
10. Discuss protection of significant tree (60" Hackberry) and potential impact on the parking.

Zoning Presentation: Ms. Wade presented the staff report for this requested rezoning from a P-1 zone to an R-4 zone. She briefly oriented the Commission to the location of the subject property on the south side of Leestown

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Road just outside New Circle Road. She said that the subject property is comprised of two parcels located on Leestown Center Way, which connects from Opportunity Way to Leestown Road. In the immediate vicinity of the property are: three parcels to the northeast, which are also zoned P-1; the Bluegrass Community and Technical College and Leestown Middle School campuses to the west, both of which are zoned A-U; the wastewater treatment plant across New Circle Road, which is zoned I-1; R-3 and B-3 zoning in the Townley Center area; and an industrial park across Leestown Road, which is mostly zoned I-1.

Ms. Wade stated that the two parcels proposed for rezoning were originally part of a rezoning to P-1 in the year 2000, which also included the three parcels immediately to the north. She displayed an aerial photograph of the subject property, noting that the subject parcels are currently vacant, and noting the multiple access points via Opportunity Way and Leestown Center Way. More than a decade after they were rezoned, only two parcels in the Professional Office Park have been developed; Ms. Wade noted, on the aerial photograph, the locations of the existing office building and branch bank. She said that the petitioner is proposing to rezone the subject parcels to R-4 in order to construct a multi-family residential development with 84 dwelling units.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Professional Service land use at this location, which reflects the existing zoning of the property. The 2001 Comprehensive Plan also shared that land use recommendation; but, prior to the 2000 rezoning, the entire area was recommended for High Density Residential land use. The proposed R-4 zone cannot be found to be in agreement with the Comprehensive Plan recommendation today; it would be in agreement with the land use that was proposed in the past.

Ms. Wade said that there are several Themes, Goals, and Objectives of the 2012 Comprehensive Plan, which have been adopted by the Urban County Council, which are relevant to the proposed rezoning. The 2012 Comprehensive Plan's Mission Statement seeks to provide flexible planning guidance; in addition, Theme A.1.b. encourages housing near employment centers and commercial areas. The nearby Veterans Administration Hospital, industrial park, and schools all serve as employment centers in the vicinity of the subject property. Theme A.2.a. encourages identifying opportunities for appropriate infill that respects the area's context and design feature. Ms. Wade stated that the 84 dwelling units proposed would result in a residential density of 14.56 dwelling units per acre. She noted that dwelling units are permitted in the existing P-1 zone, if they are located on the second floor or above. However, the applicant does not believe that a mixed-use project would be feasible at this location, given the property's limit of access and the lack of success of the existing office space. The petitioner contends, therefore, that the Planning Commission should consider the appropriateness of the existing and proposed zones. Ms. Wade stated that the petitioner also contends that the proposed High Density residential use would be highly compatible with the nearby educational facilities.

Ms. Wade said that there were concerns about access to the subject property at the time of the 2000 rezoning. The construction of the existing Professional Office use improved the access situation, but it does not appear to have been improved enough to foster a truly successful Professional Office development. The petitioner believes that it would be appropriate, therefore, to return to the previous residential recommendation for the subject property, and the staff concurs. Ms. Wade said that the staff believes that the proposed land use would result in an appropriate transition between the professional offices to the north and the educational facilities to the west; in addition, it could result in improved pedestrian and bicycle connections, so that residents of the apartments could easily access those facilities.

Ms. Wade concluded by stating that the staff and the Zoning Committee are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, explaining that the petitioner is proposing to construct 84 dwelling units, with 104 bedrooms, located off of the existing access easement of Leestown Center Way. The plan depicts three apartment buildings, with an accessory recreation/pavilion area, and a reduction of an existing detention basin on the site.

Mr. Taylor stated that the Subdivision Committee recommended postponement of this plan, due mostly to concerns about the location of parking on the site. Referring to condition #9, he said that the P-1 portion of the subject property does not meet its parking requirements on its own; the petitioner is proposing to make up that shortage on the proposed R-4 portion of the property, which would require the approval of a conditional use permit by the Board of Adjustment. Following the Subdivision Committee meeting, the petitioner submitted a revised plan to the staff that depicted two of the apartment buildings closer together, to allow for a large bay of parking that could better serve the P-1 area. Mr. Taylor stated that, with that change, the staff is now recommending approval of this request, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewer information.

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3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and arterial screening.
5. Urban Forester's approval of tree inventory map (Lots 4 & 5).
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. ~~Clarify office and apartment requirements in site statistics.~~
8. ~~Denote location of parking in the R-4 to be used to satisfy the P-1 parking requirements~~
- 7.9. Denote: Board of Adjustment approval of a conditional use for P-1 parking in the R-4 zone will be required prior to approval of a Final Development Plan.
- 8.10. Discuss Denote that the protection of the significant tree (60' Hackberry) and potential impact on the parking will be resolved at the time of the Final Development Plan for Lots 4 & 5.

Commission Question: Ms. Roche-Phillips asked if the proposed "overflow" parking area is accessible from the P-1 portion of the property. Mr. Taylor responded that it is located across the property line, but it has a vehicular connection via a drive aisle.

Petitioner Representation: Darby Turner, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the revised conditions, and he requested approval.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Ms. Beatty, seconded by Mr. Brewer, and carried 7-0 (Berkley, Blanton, Mundy, and Wilson absent) to approve MAR 2012-15, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Beatty, seconded by Mr. Penn, and carried 7-0 (Berkley, Blanton, Mundy, and Wilson absent) to approve ZDP 2012-93, subject to the eight conditions as listed in the revised staff recommendation.

2. HOMES BY ANDERSON TATE ZONING MAP AMENDMENT & HIGBEE MILL RESERVE (A PORTION OF) (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2012-16: HOMES BY ANDERSON TATE (12/30/12)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone (with conditional zoning restrictions) to a High Density Apartment (R-4) zone, for 9.3 net (11.67 gross) acres, for property located at 4250 & 4290 Harrodsburg Road and 4113 & 4204 Reserve Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Medium Density Residential (MD) future land use for the subject property, defined as 5-10 dwelling units per net acre. The petitioner proposes a 168-unit residential apartment development, in addition to the existing 12-unit building on the property.

The Zoning Committee Recommended: **Referral to the full Commission.**

The Staff Recommended: **Disapproval**, for the following reasons:

1. This requested High Density Apartment (R-4) zone is not in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Comprehensive Plan recommends Medium Density Residential future land use for the subject property, which is defined as 0-8 dwelling units per gross acre.
 - b. For the area of just the subject property (11.67 gross acres), the plan would suggest that up to 93 dwelling units be developed on the subject property.
 - c. The petitioner proposes 180 units of residential development at a density of 15.42 dwelling units per gross acre, which exceeds the density range recommended by the Plan.
2. The existing Planned Neighborhood Residential (R-3) zoning of the subject property remains appropriate for the following reasons:
 - a. The subject property was restricted less than 10 years ago, because, as stated at that time, "with the flexibility inherent in the R-3 zone, and the excess of open space being provided by the petitioner, a conditional zoning restriction limiting the total number of units on the property would be appropriate to ensure future compliance with the Comprehensive Plan's density recommendations."
 - b. The current density, floor area ratio and building height permitted on the property would provide an appropriate transition from the Harrodsburg Road corridor to the single-family Grasmere subdivision and the First Alliance Church to the east. This would also be compatible with the already constructed multi-family buildings to the south of the subject property.
3. There have been no unanticipated changes in this area since adoption of the 2007 Comprehensive Plan that would warrant this zone change.

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- b. ZDP 2012-94: HIGBEE MILL RESERVE (A PORTION OF) (AMD) (12/30/12)* - located at 4113 Reserve Road.
(EA Partners)

Note: The purpose of this amendment is to increase density and revise parking.

The Subdivision Committee Recommended: Postponement. Not all of the property proposed for rezoning has been identified for development.

Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping, buffer and arterial screening.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Department of Environmental Quality's approval of environmentally sensitive areas.
9. Dimension existing building(s).
10. Dimension clubhouse building and correct clubhouse square footage in site statistics.
11. Denote construction entrance location.
12. Denote as an amended plan in plan title.
13. Addition of purpose of amendment note.
14. Denote building encroachment into storm and drainage easements.
15. Addition of 5' contours.
16. Document ability to meet tree canopy requirements at the time of the Final Development Plan.
17. Discuss whether detention area will be used to meet open space requirements.
18. Discuss status of Stedman Drive connection.
19. Discuss emergency vehicle and pedestrian access to existing and proposed development.
20. Discuss future development of vacant Stedman Drive lot.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property on Harrodsburg Road, south of Man O' War Boulevard. She stated that the subject property, which is approximately nine acres in size, was originally a 15-acre site. In the vicinity of the subject property are some parcels with A-U zoning, both across Harrodsburg Road and adjacent to the subject site to the north and southeast; the remainder of the parcel that was previously rezoned for the Old Higbee Mill Reserve condominium and townhouse development; R-1D and R-1C areas to the east, for part of the Plantation subdivision; and across Harrodsburg Road, the Palomar neighborhood and the Bowman Property, both of which are developed or proposed for single-family residential use. Ms. Wade noted that Reserve Road is a private roadway that connects from Old Higbee Mill Road to Stedman Drive to the north.

Ms. Wade displayed several photographs of the subject property, noting the location of Stedman Drive, which is constructed, but does not meet the requirements for dedication of a public street; a barricade between a portion of Stedman Drive and a stub street that was constructed along with the adjacent subdivision; the location of Reserve Road, including the five buildings that were constructed after the property was rezoned; and one structure that exists on the subject property. She said that the property was rezoned from A-U to R-3 in 2003; at that time, the property was limited via conditional zoning to a maximum of 177 dwelling units. There were concerns during that rezoning that the flexibility inherent in the R-3 zone, along with the excess open space and off-street parking depicted by the petitioner on their development plan, could result in a lack of compliance with the Comprehensive Plan's recommended density for the subject property. Displaying additional aerial photographs, Ms. Wade noted for the Commission the location of the existing structure on the subject property, which contains 12 residential units; the petitioner is proposing to add 170 new units, for a total of 182. All but two of those units are proposed to be contained in multi-family buildings, with the remaining two units as a duplex. Ms. Wade also displayed the following street-level photographs: 1) a view of Stedman Drive, noting the location of the barrier and the lack of sidewalks and the final course of asphalt; 2) a view of Reserve Road, which connects the two portions of the proposed development; 3) a view to the north, including the existing structure on the subject property; and 4) part of the existing development at the southern end of Old Higbee Mill Road.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Medium Density Residential land use for the entire Higbee Mill Reserve development, including the portion proposed for rezoning. Medium Density use is defined as 0-8 dwelling units per gross acre, which was the format used to determine the appropriate density on the site during the 2003 rezoning of the entire Higbee Mill Reserve property. For the 11.67 gross acres proposed for rezoning, the Comprehensive Plan would recommend up to 93 dwelling units; the petitioner is currently proposing 170 units. Ms. Wade said that the staff does not believe that the petitioner has provided an appropriate justification for increas-

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ing density and floor area ratio beyond that permitted with the existing zoning and conditional zoning restrictions. In addition, there have been no unanticipated changes in the vicinity of the subject property, and the staff does not believe that the existing R-3 zoning is inappropriate at this location. Ms. Wade noted that the zoning restrictions that are currently in place would permit an additional 99 dwelling units on the subject property. However, because the petitioner wishes to construct 170 dwelling units, the staff is concerned about the increased density on the property. The staff also believes that the Reserve Road connection should be maintained, while the petitioner is proposing to either sever that connection or reduce its connectivity. The staff contends that, without that connection, residents of both developments would suffer. Ms. Wade stated that the staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda. She noted that the Zoning Committee recommended referral to the full Commission.

Commission Question: Mr. Owens asked if the staff would be willing to consider an approval recommendation for this request if Reserve Road was proposed to remain connected. Ms. Wade answered that the possible lack of connectivity of Reserve Road is directly related to the staff's determination of whether more density on the property might be appropriate.

Mr. Penn asked if the Stedman Drive barrier would need to be removed and that roadway upgraded in order for this request to move forward. Ms. Wade responded that any party who expects to move forward with the development of the subject property will likely be required to make those improvements, whether or not the density is increased as proposed. She explained that the staff believes that, when this development was proposed, Stedman Drive was clearly intended to be connected.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that the staff had prepared and distributed revised conditions for approval prior to the start of today's hearing. Using a rendered copy of the plan, he noted the location of the area proposed for rezoning; the existing condominium buildings; Stedman Drive, including the existing barrier; Reserve Road, and the proposed location of interdiction with a fire gate; and Higbee Mill Road, including its signalized intersection with Harrodsburg Road. Mr. Martin stated that the development plan depicts seven proposed new buildings with associated parking, including covered garages for some of the units; the existing drainage easement and detention area; a proposed clubhouse and pool; and the proposed duplex across Stedman Drive. He said that this is a revised version of the development plan. The Subdivision Committee originally recommended postponement, primarily due to the omission of the duplex area from the original plan. Mr. Martin noted, for the benefit of the citizens present, that the staff and the Subdivision Committee review each zoning development plan as if the proposed zone was already in place.

Mr. Martin stated that the staff is now recommending approval of this revised plan, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping, buffer and arterial screening.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~9. Dimension existing building(s).~~
- ~~10. Dimension clubhouse building and correct clubhouse square footage in site statistics.~~
- ~~11. Denote construction entrance location.~~
- ~~12. Denote as an amended plan in plan title.~~
- ~~13. Addition of purpose of amendment note.~~
9. 44. Denote that building encroachment into storm and drainage easements shall be resolved at the time of the Final Development Plan.
10. 45. Addition of 5' contours.
11. 46. ~~Document ability to meet~~ Denote that tree canopy requirements will be met at the time of the Final Development Plan.
12. 47. ~~Discuss~~ Denote whether or not detention area will be used to meet open space requirements.
13. 48. Discuss status of Stedman Drive connection.
- ~~19. Discuss emergency vehicle and pedestrian access to existing and proposed development.~~
- ~~20. Discuss future development of vacant Stedman Drive lot.~~

Mr. Martin stated that the petitioner is proposing to construct 168 apartment units in seven buildings, with 372 bedrooms. There are 12 units in the existing buildings, with 30 bedrooms. The petitioner is proposing 337 parking spaces, which is slightly over the requirement of 313 spaces for the proposed development. Mr. Martin said that the total lot coverage for the development would be 26.7% of the lot, with a 30% limit. The development is proposed to

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be 275,960 square feet in size, with a floor area ratio of .68, and a limit of .7. He noted that the proposed development is therefore very close to the lot coverage and FAR limits for the R-3 zone.

With regard to the conditions for approval, Mr. Martin stated that condition #9 is standard, given the large number of easements on the subject property, and that #10 is standard as well. He said that #11 refers to the staff's concerns that the tree canopy can be met, since there is a large amount of building coverage and parking proposed for the site. Condition #12 refers to the staff's concerns about the use of the detention area as open space for the development. Mr. Martin stated that that concept has been applied to other sites, including the Sharkey Property, but the staff believes that the issue is important and its resolution should be assured. The petitioner is proposing a clubhouse and pool, which can be included in the usable open space for the property; however, the staff is concerned that there might be a conflict between the detention area, tree canopy, and open space requirements, and they want to ensure that the issue is resolved. Mr. Martin said, with regard to condition #13, that a final record plat was approved for the subject property that included Stedman Drive as a public roadway; however, that portion of the plat has not been recorded. Subsequently, a couple of minor plats have reconfigured the property somewhat. The staff is comfortable that Stedman Drive will be completed and dedicated, but they felt it important to leave that condition as a discussion item so that it will not be overlooked at some point in the future. Mr. Martin noted that the staff was informed that the barrier was placed on Stedman at some point in the late 1980s, around the time of the dedication of a portion of that roadway in 1987. After speaking with several LFUCG divisions, the staff determined that that barrier will be removed at such time as Stedman Drive is completed and dedicated as a public roadway.

Mr. Penn asked, if a fire gate is constructed on Reserve Road, how drivers would be able to access the nearest signalized intersection in order to reach Harrodsburg Road. Mr. Martin answered that the route to reach the Higbee Mill/Harrodsburg Road intersection would be convoluted, since a driver would have to travel through the parking lot of the proposed development; but it would be possible.

Ms. Plumlee asked if there would be only one way out of the proposed development. Mr. Martin answered that connections are proposed at Reserve Road, with a fire gate; at Higbee Mill Road, without the existing direct access; and at Stedman Drive.

Mr. Owens asked if the fire gate would be accessible to the police department. Mr. Martin responded that that issue is a concern to the staff as well.

Note: Mr. Wilson arrived at this time.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the proposed development presents the Planning Commission with the opportunity to uphold the principle set forth in both the 2001 and 2007 Comprehensive Plans to not expand the Urban Service Area boundary. There is also no intent in the 2012 Comprehensive Plan to expand that boundary, since the community's overarching goal has been to preserve the rural landscape. Mr. Simpson said that, in order to maintain that boundary, development within the Urban Service Area will require creativity and flexibility, and not just "looking at what the color on the map recommends." He said that, in the previous zone change, the property had been recommended for Professional Office zoning in the 2001 and 2007 Comprehensive Plans, but the staff recommended approval of residential zoning based on the recommendation of the 1996 Plan. Mr. Simpson believes that the Planning Commission made a good decision in that case, because the development market has changed considerably since 2007.

Mr. Simpson stated that the petitioner is proposing to provide affordable housing on land that has been designated for multi-family use, at a density of 71 units more than the number recommended by the Comprehensive Plan, but in one fewer building than was approved when the property was rezoned in 2003. The petitioner contends that this proposal would use the existing space more efficiently, and provide better connectivity in the area via the connection of Stedman Drive.

Mr. Simpson said that the original developer of the subject property became a victim of the recession in 2008, which was unanticipated by the 2007 Comprehensive Plan. The existing 60 units on the property were developed as a condominium regime. Due to the way the property was developed, and changes to the banking laws in 2008, the existing condo owners are now able to sell only to cash buyers. For the past year, the condo owners, along with the petitioner and the bank that owns a large portion of the property, have been working to remove themselves from the regime and in order to be able to sell their property. The petitioner contends, therefore, that there has been an economic change since 2007 that has substantially altered the character of the subject property.

Mr. Simpson stated that the petitioner also contends that the proposed rezoning to R-4 is substantially in compliance with the Comprehensive Plan because, for the first time since the 1970s, Stedman Drive is proposed to be completed in order to become a connection between the Grasmere and Plantation neighborhoods and Harrodsburg Road. He said that the Zoning Committee members expressed concerns at their meeting two weeks ago about the lack of connectivity in the development due to the proposed fire gate on Reserve Road. The existing residents on

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the subject property have requested the interdiction of Reserve Road in order to limit traffic, since, because it is a private roadway, they are required to pay for its maintenance. The residents are also concerned about the use of Reserve Road as a "raceway, straight shot" to Stedman Drive, which many drivers use as a means to access the signalized intersection at Higbee Mill Road and Harrodsburg Road. Mr. Simpson said that, at the Zoning Committee meeting, one of the Committee members suggested providing connectivity around the western edge of the property. The petitioner contends that the proposed configuration depicted on their development plan will deter the unwanted cut-through traffic, while still providing the important connectivity. Mr. Simpson said that the condo owners are aware that it is a balancing act between their desire to limit traffic on Reserve Road, which is in need of repair due to several exposed manhole covers, and the need for connectivity. He added that the petitioner contends that all of these issues could be resolved at the time of a Final Development Plan for the property, and should not hold back the requested zone change.

Referring again to the previous zone change, Mr. Simpson stated that he represented the Meadowthorpe neighborhood when the Leestown Center development was originally rezoned. The developer proposed to construct apartments, and the neighborhood strenuously objected; they eventually compromised on a professional office development. Now, increases in density are more common, and there were no Meadowthorpe residents present to object to the request just approved by the Commission. Mr. Simpson said that apartment developments are often controversial; but, in this case, the existing condo owners are in full support of the proposed development.

Nathan Billings, attorney, was present representing the Palomar Reserve Council of Co-owners, which is the condominium association representing the existing residents on the subject property. He said that homeowners often object to increased density in their neighborhoods; but, in this case, the condominium association has been working with the petitioner, and 78% of the members present at a meeting last week voted in support of the proposed development.

Mr. Billings said that the Planning Commission does not normally need to consider issues like owner financing when reviewing zone change requests; but, in this instance, it is necessary. He said that there are five buildings on the south end of the subject property, and a sixth building at the north end of the property. The five buildings to the south, which contain 60 units, are all of a similar architectural style and have garages and brick facades; the building to the north has 12 units, is vinyl-clad, and has all exterior hallways and open parking. There is a significant amount of acreage involved in the condominium regime. Mr. Billings said that, of the 72 units, approximately 30 are owned by investors, banks, or non-owner occupants; and the remainder of the residents own their units. He explained that those numbers are significant because banking guidelines were changed in August of 2012 to the effect that developments that have 50% or less owner-occupied units are now not eligible for federally-backed financing. In addition, developments must be completed, or slated to be completed, in order to be eligible for that financing. Because the condo development was never completed, any owner now has a significant burden to overcome, because the units are marketable to only cash buyers (who are typically investors, not residents) and prospective buyers who can obtain a loan from a local bank, which will not be sold on the mortgage market. Mr. Billings said that the end result is that most of the condo owners, many of whom are retirees, are unable to sell their units for a market rate, because financing is unlikely.

Mr. Billings stated that the Planning Commission reviews many zone changes where the nearby residents are opposed to the new development. In this instance, however, the petitioner met with the residents at the outset and began a dialogue with them to facilitate a plan that will benefit both parties. The result of those discussions was a mutual agreement to create two separate developments so that the condominium regime will have five buildings on the south end of the property, without the cost of caring for the 12 acres on the north side, which will be shifted to the apartment complex.

With regard to the issue of connectivity, which has been a major point of concern throughout this hearing, Mr. Billings said that many of the condo owners are retirees and/or elderly people. He said that Reserve Road is private, and will have to be maintained by the condo owners, but it is currently used by drivers "speeding through to avoid the spotlight." The condo owners contend that, while connectivity is important, their safety is more so, and the necessary connection can be provided at the western end of the property.

Mr. Billings said that he contends that this proposed zone change, although not in specific compliance with the recommendations of the Comprehensive Plan, can accomplish goals that are broader than what that Plan intended when it was approved in 2007. On behalf of the Palomar Reserve Council of Co-owners, he asked that the Planning Commission approve this rezoning request, and the associated revised development plan.

Commission Questions: Mr. Penn asked if the condo association members were truly in favor of having the residents of the proposed large apartment complex cut through their parking lot in order to provide the necessary connectivity. Mr. Billings answered that, ideally, there would be no connection between the two properties. However, the condo owners are willing to agree to that stipulation in order to allow their development to be completed, and to facilitate the sale of their property in the future. Mr. Penn asked if providing the connection as proposed would be a safety issue. Mr. Billings responded that, if the eastern end of the proposed development remains open, that could

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create a safety issue. Mr. Penn stated that he was concerned about the safety of the retired residents if a large amount of traffic uses the condo parking area as a cut-through. Mr. Billings answered that, if a "straight shot" is provided through the property, safety could be an issue. However, he does not believe that there will be as much cut-through traffic if the route through the subject property is circuitous. He added that, once Stedman Drive is opened to through traffic, residents of both developments could exit through the neighborhood toward Man O' War Boulevard.

Mr. Brewer asked for clarification with regard to the percentage of owner support for the proposed rezoning. Mike Mason, president of the Palomar Reserve Council of Co-owners, stated that there are 72 units in the condo development; approximately 30 of those units are investor-owned. He said that, at a meeting of the owners, 80% were represented either in person or by proxy. Of the overall owners, 78.8% voted in favor of the proposed rezoning in order to protect their investment in their community. Mr. Mason added that the majority of the condo owners agree that the proposed development is the best way to save their community. Mr. Billings added that 80% of the condo owners attended the meeting either in person or by proxy; 20% of the property owners were not represented. Out of all of those who attended the meeting, there was only one vote in opposition. Mr. Brewer stated that he was attempting to determine how many of the actual residents of the property are in favor, since they will bear the effects of the additional traffic cutting through their parking lot. Mr. Mason responded that the vast majority of those who voted are owner-occupants. He said that the bulk of those who do not typically vote on issues affecting the condominiums are not owner-occupants.

Mr. Cravens asked if the proposed development is shovel-ready. Mr. Simpson answered that all of the financial elements are in place, and the petitioner is ready to go forward. Brian Anderson, 2233 Guilford Lane, and David Tate, petitioners, stated that they have all of the financing approved and in place; and they are ready to begin construction on the proposed development. They would likely start with the construction of two of the new buildings.

Citizen Comments: Ray Waits, 2200 Old Higbee Mill Road, stated that his family had owned their land for many years, and, in fact, sold the subject property to the original developer. At the time of the rezoning in 2003, Mr. Waits granted an easement to the developer based on the promise of a certain density and type of development. The property was not developed as proposed, however, and the road in front of his home has proven to be inadequate for the amount of traffic. Mr. Waits is concerned about the possibility of additional traffic on Old Higbee Mill Road, and the lengthy wait times to make the right-hand turn onto Harrodsburg Road inbound. He suggested that the petitioner consider installing a traffic signal at Stedman Drive, where there have been numerous accidents, and work to eliminate cut-through traffic through the existing condominium development.

Risto Marttinen, 4205 Reserve Road, #201, stated that he is concerned about the proposed number of parking spaces for the apartment development, since there will be no covered garages. He said that he was also concerned about the steep slopes in the area, including a quarry with a solid limestone hillside that will have to be removed for the construction of the proposed development. Mr. Marttinen said that he was the one owner present at the condo meeting who voted in opposition to this request.

Robert Nave, 4205 Reserve Road, #203, stated that he is a five-year resident of the Palomar Reserve development, and he loves living there. He said that there have been problems with the undeveloped portion of the property, including illegal dumping; speeding cut-through traffic; and children playing in dangerous, high-traffic areas. Mr. Nave said that he believes that, if the proposed rezoning is approved, the fire gate on Reserve Road should be installed to help control cut-through traffic. He added that the condominium residents need the rezoning in order to improve their situation.

Petitioner Rebuttal: Mr. Simpson stated that conspicuous by their absence is the "roomful of people" usually present to oppose rezoning requests for apartment developments. He reiterated that the petitioner believes that this request is in compliance with the Comprehensive Plan, but the planning process has been "stuck with the color on the map." In some cases, the "color on the map doesn't control" the Commission's decision, and Mr. Simpson believes that this should be one of those situations. Referring to his exhibit packet, he read the following into the record from the Comprehensive Plan:

"Plan interpretation should take into consideration the following outcomes: Support increased residential density in a manner complementary to and compatible with the existing nearby development; serve to create a cohesive urban form; promote environmental responsibility and sustainability; ensure timely provision and/or upgrade of community infrastructure..."

Mr. Simpson stated that the petitioner contends that the proposed rezoning could accomplish all of those outcomes, by providing affordable housing within the Urban Service Area boundary; completing the development of the urban form that was begun on the property; and completing the incomplete road system on the subject property.

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Chairman Comment: Mr. Owens asked Mr. Simpson to limit his comments to rebuttal, rather than to reinforcement or reiteration of his earlier presentation. Mr. Simpson noted that he had not completed his presentation, and read further from the Zoning Ordinance:

“...Promote development that links, rather than isolates, the community and the neighborhood.”

With regard to Mr. Penn's earlier question, Mr. Simpson stated that most of the residents of the apartment complex would likely make a right-hand turn from Stedman Drive to Harrodsburg Road toward downtown Lexington. He said that drivers wishing to make a left-hand turn could do so at the Stedman Drive intersection, or via a winding, 24' road through the parking lot to the signal at Old Higbee Mill and Harrodsburg Roads. Mr. Simpson said that the petitioner believes that the proposed rezoning complies with the Comprehensive Plan recommendation, takes advantage of an opportunity to increase density, and can provide completion of an existing neighborhood, with unprecedented support from the residents. He concluded by requesting approval.

Staff Rebuttal: Ms. Wade stated that Mr. Simpson had mischaracterized the staff's recommendation on the earlier Leestown Center rezoning, which involved a site with a different history and character, and is not really pertinent to this request.

With regard to the question of connectivity, Ms. Wade said that Stedman Drive is not the staff's primary concern; it will be required to be connected along with any development of the property, whether it is rezoned or not. The staff's issue is the connectivity of Reserve Road, which is an issue that can be deferred to the Final Development Plan stage, if the Commission so chooses. Ms. Wade said, however, that the staff cannot support a level of density above the Comprehensive Plan recommendation on the site when the petitioner appears to be unwilling to provide more appropriate street connectivity.

Ms. Wade stated that the staff is sympathetic to the concerns of the owners in the condominium regime; but that regime can be removed from the subject property, with the bank's cooperation, and the development can be constructed as the staff suggests: either with the connection of Reserve Road, or without the extra residential units. She reiterated that the staff is recommending disapproval of this request.

Commission Questions: Ms. Plumlee asked how many total units would be constructed. Mr. Simpson responded that the petitioner is proposing to construct 71 units above the number allowed by the existing R-3 zoning, for a total of 182 units. Ms. Wade answered that the entire development would have 248 units, including the six townhouses, all of the apartments, and the duplex.

Ms. Roche-Phillips said that the Planning Commission is statutorily required to find that either the proposed rezoning is in compliance with the Comprehensive Plan, or that the existing zoning is inappropriate. She stated that the existing zoning does allow for group residential use, and asked Mr. Simpson why the petitioner believes the existing zoning is inappropriate. Mr. Simpson responded that the petitioner contends that the proposed rezoning is in agreement with the recommendations of the Comprehensive Plan. He said that the petitioner does not contend that the existing zoning is inappropriate and the proposed zoning is appropriate; rather, the petitioner contends that there have been significant changes of an economic nature in the area since the Plan was adopted in 2007, caused by the recession in 2008. Those economic changes “locked up” this condominium regime in terms of development. The petitioner contends that the proposed rezoning is justified based on that element of KRS 100.213.

Mr. Simpson added, with regard to Ms. Wade's rebuttal comments, that Stedman Drive will not be completed unless the petitioner constructs it, since it is owned by a bank.

Mr. Owens asked if the petitioner would be willing to add a condition to the development plan to require the resolution of the connectivity of Reserve Road at the Final Development Plan stage. Mr. Simpson answered that it is important to the condo residents to eliminate that connectivity; but, although the petitioner remains firm in their support of the development plan as proposed, they understand that that connection is not a condition of the zone change.

Ms. Beatty asked if the staff could provide more information about managing traffic in the proposed development. Ms. Wade responded that the Division of Traffic Engineering did not have a representative present at this hearing, but the Zoning Committee members addressed the question of other available options when they reviewed the zoning development plan. Other options mentioned were speed bumps on Reserve Road, and requiring the “convoluted” path through the proposed development along with the closure of Reserve Road. Ms. Wade stated that there are other available options, and that the Division of Traffic Engineering could review both the Old Higbee Mill/Harrodsburg Road and Stedman Drive/Harrodsburg Road intersections to see if they could be improved. She noted that any signalization at the Stedman Drive intersection would have to meet the warrants for such.

Ms. Beatty asked if she heard correctly that 99 additional units could be constructed on the subject property without a zone change. Ms. Wade responded that that was correct; the entire property includes six townhouse units; the five

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existing buildings in the condo regime; and one existing building to the north end of the property. The conditional zoning restriction applied in 2003 limits the property to 177 units; there are 78 existing units on the property.

Ms. Roche-Phillips asked how many more units would be permitted on the subject property if it is rezoned to R-4. Ms. Wade answered that 71 additional units would be permitted.

Zoning Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Penn, and carried 7-1 (Wilson abstained; Brewer opposed; Berkley, Blanton, and Mundy absent) to approve MAR 2012-16, for the following reasons:

1. Approval of the applicant's rezoning request will help fulfill several Goals and Objectives of the 2007 Comprehensive Plan, as well as many of the land use policies set out in the Plan; in particular, the following Goals of the 2007 Comprehensive Plan will be furthered:
 - a. The proposed increase in density will be compatible with the existing condominium project to the south, and these units will be located in one less building than when the 2003 zone change was approved for the entire parcel. The increase in connectivity to Harrodsburg Road will facilitate ingress and egress for those additional units as well as the single-family homes to the east.
 - b. The application is consistent with Goal 8, which encourages creating strategies to enable and encourage appropriate infill and redevelopment of established developments and neighborhoods.
 - c. The application is consistent with Goal 15, which is to preserve, protect and enhance the character and quality of existing neighborhoods.
 - e. The application is in substantial compliance with the 2007 Comprehensive Plan because it supports increased residential density in a manner complementary to and compatible with existing nearby development.

Chairman Comment: Mr. Owens suggested that a condition be added to the development to resolve connectivity for Reserve Road at the time of a Final Development Plan.

Commission Question: Mr. Penn stated that he voted in favor of the zone change because he believes that it is in the best interest of the community; but he is concerned about the connectivity on the subject property, particularly with increased density. He stated that that decision could be deferred to the Final Development Plan, but noted for the petitioner that providing safe connectivity will be necessary.

Mr. Owens agreed with Mr. Penn's comments, and stated that he is concerned about traffic on the subject property as well. He opined that the question will require serious discussion at the time of the Final Development Plan.

Ms. Roche-Phillips suggested amending condition #14 to resolve the method of connection of Reserve Road at the time of the Final Development Plan.

Development Plan Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 8-0 (Berkley, Blanton, and Mundy absent) to approve ZDP 2012-94, subject to the 13 conditions as listed in the revised staff recommendation, and adding a new condition #14 to read: "Resolve methods of connection of Reserve Road at the time of Final Development Plan."

Note: Chairman Owens declared a brief recess at 3:15 p.m. The meeting reconvened at 3:24 p.m.

3. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. MAR 2012-17: URBAN COUNTY PLANNING COMMISSION - petition for a zone map amendment to a Neighborhood Design Character Overlay (ND-1) zone for 52.68± net (59.72± gross) acres, for properties located at 1200-1280 Colonial Drive; 4009-4021 John Alden Lane; 4004-4025 Mayflower Lane; 1228-1273 and 1290 Standish Way; and 2492-2516 Versailles Road (even addresses only).

Proposed Design Standards:

1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

(Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)

2. No new front yard fencing shall be permitted with the exception of those homes fronting on Versailles Road.

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(Note: "Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)

3. Floor area to lot size ratio shall be limited to 25% maximum.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Low Density Residential (LD) land use for the neighborhood. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate accessory structures, fencing and floor area ratio (FAR) regardless of the underlying zoning.

The Zoning Committee made **no recommendation** on this item.

The Staff Recommends: **Approval of the ND-1 overlay zone with the Staff Alternative Design Standards**, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan and the Goals and Objectives of the 2012 Comprehensive Plan for the following reasons:
 - a. The Goals and Objectives of the 2007 Plan identify eight overriding themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." This will be enhanced with this zoning overlay for The Old Colony neighborhood. Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The Goals and Objectives of the 2012 Comprehensive Plan support the development of ND-1 Overlay zones to enable neighborhoods to flourish (Theme A.3.a).
 - c. The implementation of a Neighborhood Design Character (ND-1) Overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, independent of the underlying zoning.
 - d. The Old Colony neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Alternative Design Standards (Additions are identified by an underline, and deletions to the original proposal are identified by a ~~strike through~~.)

1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

~~*(Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)*~~

2. No new front yard fencing shall be permitted, with the exception of those homes fronting on Versailles Road.

~~*(Note: "Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)*~~

3. Floor area to lot size ratio ~~Lot coverage~~ shall be limited to a maximum of 25% ~~maximum~~.

These restrictions are appropriate, given the study undertaken to identify the existing neighborhood character by The Colony Neighborhood Association (Residents, Inc.), and are necessary to maintain that existing character of the neighborhood in the future.

Staff Presentation: Ms. Wade began the staff's presentation by distributing to the Commission members a letter from The Colony Neighborhood Association and two letters from citizens.

Ms. Wade stated that the Old Colony Neighborhood Association submitted a request that the Planning Commission act as the applicant in their pursuit of ND-1 zoning; the Commission then initiated this rezoning request in July of 2012. The Old Colony neighborhood is comprised of 72 individual parcels, for a total of just over 50 acres in size. It is located on the south side of Versailles Road just east of New Circle Road. The neighborhood has

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access to Versailles Road via Colonial Drive, which provides a loop traffic system. There is a newer portion of the neighborhood, which is served by the same access point on Versailles Road and a loop traffic system created by the continuation of John Alden Drive. The new part of the neighborhood is not included as part of this request for ND-1 zoning. Ms. Wade stated that the subject area is zoned entirely for Single Family Residential use; the majority of the property is zoned R-1A, with four parcels, located on Colonial Drive at Standish Way, zoned R-1B. All of the surrounding property is also zoned for Single Family Residential use of varying densities: to the north, across Versailles Road, is R-1C zoning, with R-1A and R-1B zoning immediately adjacent to The Colony neighborhood south of US 60.

Ms. Wade displayed an aerial photograph of the subject area, explaining that The Colony was developed in the 1940s, 50s, and 60s. It was platted in four units, one of which is developed as the New Colony and is not included as part of this request. This request for ND-1 zoning includes Units 1 and 2, and a portion of Unit 3 located along Colonial Drive. The homes in the neighborhood are a mix of mid-century modern, classic ranch, and traditional colonial style architecture. The distinguishing character of the neighborhood is the large lots, most of which are between ½ acre and one acre in size, along with the existing mature trees and pockets of greenspace that provide for an open feel.

Ms. Wade stated that The Colony Neighborhood Association (TCNA) requested that the Planning Commission initiate a rezoning to ND-1 in order to maintain the distinguishing features, character, and style of their neighborhood. Article 29 of the Zoning Ordinance includes a requirement that any neighborhood seeking ND-1 overlay zoning must meet at least one of the Overlay District designation criteria. In this case, the proposed ND-1 overlay meets Criterion 7, which denotes that the proposed area must be well-established, with a geographically defined area, united by culture or plan of development. The Colony neighborhood was planned and platted with a consistent design for low-density residential development.

Ms. Wade said that, at the beginning of the ND-1 process, the neighborhood set forth two preservation goals: to preserve open space in front of and behind the residences, and to prevent the overdevelopment of individual lots beyond the historical building pattern in the neighborhood. TCNA then began a four-year process to determine which of the possible ND-1 standards might be the most applicable to their neighborhood. They discovered that the underlying R-1A zone limits the allowable density on the lot, which helped to ease their concerns somewhat; but they still believed that the neighborhood needed protection. Based on those concerns, they proposed three Design Standards, related to accessory structures, fencing, and floor area ratio (FAR).

With regard to proposed Design Standard #1, Ms. Wade said that would limit each property to one new accessory structure, not to exceed a maximum of 180 square feet in size, with a maximum roof height limitation of 12 feet, to be constructed only in the rear yard. This restriction is proposed primarily to limit the construction of detached garages or carports, which, for the most part, do not exist in The Colony. In reviewing the neighborhood's proposal and conducting site visits, the staff determined that there are six existing accessory structures that exceed the 180 square-foot limit proposed, or just over 8% of the properties. Displaying photographs of those structures, Ms. Wade explained that two of them are detached garages, located to the rear of the primary structures. She added that proposed Design Standard #1 included a note; the staff would suggest deleting that information. The Planning Commission initiated the rezoning with that language, but the staff believes that it essentially duplicates information that is included in the Zoning Ordinance.

Ms. Wade stated that proposed Design Standard #2 would prohibit new front yard fencing, with the exception of properties that have frontage along Versailles Road. She said that all of the homes that have front or side yards that face Versailles Road currently have fencing. The staff determined through their research that there is only one other property in the neighborhood that has a front yard fence, and it would become non-conforming if the proposed Design Standards were approved. Ms. Wade added that the note that TCNA included with that proposed Design Standard is not applicable, and it should be deleted.

Ms. Wade said, with regard to proposed Design Standard #3, that it would establish a maximum FAR of 25% for The Colony. After meeting with TCNA and the Homebuilders Association, the staff determined that the data submitted to the staff for their review actually detailed lot coverage statistics, rather than FAR. TCNA intended for that Standard to regulate lot coverage, not FAR, so the staff would suggest alternative language in order to correct that issue. The result would be a 25% lot coverage limit, which would give all of the properties in the neighborhood room for expansion. The average existing lot coverage in the neighborhood is 10%, and the maximum is 18%.

Ms. Wade stated that the staff typically documents the location of any properties that will become non-conforming. She displayed for the Commission members a graphic depicting the location of each property that will become non-conforming with regard to accessory structures and front yard fencing.

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Ms. Wade stated that the 2007 Comprehensive Plan recommends Low Density Residential land use for The Colony neighborhood, which is consistent with its existing zoning. She said that that Plan, as well as the adopted Goals & Objectives for the 2012 Comprehensive Plan, support the use of ND-1 zoning. One of the overriding Themes of the 2012 Comprehensive Plans refers to “preserving, protecting and maintaining neighborhoods in a manner that ensures stability and the highest quality of life for all residents.” Goal 15, Objective I also encourages providing stability and protection, particularly for older neighborhoods. Ms. Wade stated that there are also several other Goals & Objectives that support ND-1 overlay zoning. Therefore, the staff believes that the proposed ND-1 overlay zone is in agreement with the 2007 Comprehensive Plan recommendations for The Colony, and the specific Standards provided by TCNA will help to maintain that existing character. With regard to the recommendations of the 2012 Comprehensive Plan Goals and Objectives, Ms. Wade stated that Theme A.3.A “encourages well-designed neighborhoods by enabling existing neighborhoods to flourish through expanded opportunities for neighborhood character preservation.”

Ms. Wade noted that the staff report refers to the Hal Price Headley House, at 1236 Standish Way, as being listed on the National Register of Historic Places as a single Property Landmark. She said that Article 29 of the Zoning Ordinance prohibits the inclusion of a historic district in an ND-1 overlay zone. Since that house and lot are not technically part of a historic district, the staff believes that the property should remain part of the ND-1 overlay boundary, because the intent of the Zoning Ordinance is to avoid conflicting regulations that overlap. The proposed standards do not refer to the character or physical characteristics of the property itself, so the staff does not believe that they conflict with the National Register requirements. Ms. Wade stated that the staff is recommending approval of the alternative Design Standards, for the reasons as listed in the staff report, including a change to Standard #2 to address an issue that was raised at the Zoning Committee meeting two weeks ago. At that time, neighborhood representatives were asked if they had considered whether retaining walls should be permitted. TCNA representatives said that they had not considered the issue of whether or not to permit retaining walls, so they met to discuss it, and determined that Design Standard #2 should be altered to that effect. The staff made the change to that Standard, as reflected in the supplemental staff report, and they are recommending approval of this request.

Neighborhood Presentation: Mike Hart, Chair of the The Colony Neighborhood Association’s ND-1 committee, stated that the neighborhood was developed in 1947, with deed restrictions that included the Design Standards currently being proposed. The deed restrictions expired in 1979; and, since that time, most of the neighborhood has continued to exist in accordance with the restrictions. The TCNA’s primary reason for the proposed ND-1 overlay zone is to continue to preserve the neighborhood in its current state, as it is facing increasing development pressure. Mr. Hart read the following quote from Professor Clyde Carpenter into the record of the meeting:

“The Colony is a significant model of neighborhood development, uniquely still retaining its original architectural integrity. It is, in my opinion, potentially threatened by the possibility of insensitive and inappropriate future development, unless strategies for the protection and preservation are enacted.”

Mr. Hart stated that, four years ago, the TCNA Board of Directors chose to pursue ND-1 zoning in order to protect the character of their neighborhood. He said that the process has been grueling, but it has also been “a positive journey into the history, makeup, and function” of the neighborhood.

With regard to the proposed Design Standards, Mr. Hart stated that the three proposed restrictions would help to protect the character of The Colony. He said that the intent of Standard #3 is to prevent the construction of “McMansions” which could disrupt the view and harmony of the neighborhood, and possibly cause the removal of some of the mature trees.

Mr. Hart said that he is aware that there are residents who oppose the proposed ND-1 overlay, but many residents have noted that they were raised in The Colony and ended up returning there because they loved the neighborhood. He believes that the proposed restrictions are reasonable and fair, and they make sense with the intent of the ND-1 zone, which is to preserve an established neighborhood. Mr. Hart added that The Colony is a “gateway to Lexington,” and, as such, its preservation is important.

Citizen Support: Michael Harrison, 1293 Standish Way, stated that he is the President of the Board of The Colony Unit 4 Community Association, aka the New Colony and Residents, Inc.. He said that the Board of Residents, Inc. unanimously voted in support of TCNA’s proposal for ND-1 zoning. The Board received no negative comments from their members about the proposed ND-1 overlay zone.

Mr. Harrison stated that he represents 85 homes in the New Colony, 54 of which are directly affected by the proposed ND-1 overlay due to their shared ingress and egress through The Colony. He noted that there are six houses on Standish Way that are not included in this request, since they are part of the New Colony. Mr. Harrison believes that The Colony is “one of Lexington’s unique treasures,” due in part to its large lots, greenspace, and open areas.

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Mr. Harrison said that, in the time that he has lived in The Colony, a number of the houses have been renovated or updated. There are also some rental properties, and Mr. Harrison believes that one of the absentee owners "shows no sense of community" in getting along with the other property owners.

With regard to the proposed Design Standards, Mr. Harrison stated that they included only three "common-sense restrictions," compared to the 40 use requirements in the deed restrictions for the New Colony. He added that the proposed Design Standards are also much less restrictive than those enacted in Chevy Chase and some of the other areas in Lexington with H-1 or ND-1 overlays. The New Colony deed restrictions prohibit all sheds, shacks, or accessory structures, and permit only four-plank black horse fences and safety fences around swimming pools.

Mr. Harrison said that, when a wire fence was installed in the front yard of 4014 John Alden Lane, he received more than 30 phone calls from concerned homeowners in the New Colony. He and his neighbors believe that that fence detracts from the beauty and character of The Colony, and he believes that the proposed restriction can help to eliminate possible changes to properties that could destroy the fabric of the neighborhood. Mr. Harrison also believes that, given the large lot sizes in The Colony, the residents of the New Colony are also concerned about the possible loss of property values if homes are torn down and replaced by "mega-mansions." He said that he and his neighbors believe that the proposed Design Standards are reasonable, and that they should be approved by the Planning Commission in order to preserve the unique character of The Colony.

Dave Kessler, 1228 Standish Way, stated that he is the Treasure of TCNA and a 15-year resident of the neighborhood. He said that he was a part of the ND-1 process from its inception, and he believes that it was transparent and inclusive.

Mr. Kessler said that the concept of ND-1 zoning was introduced to TCNA members at their annual meeting in June of 2009. ND-1 brochures and handouts were distributed, and a recommendation was made to form a study committee. Later that summer, Ms. Rackers attended a meeting at a TCNA member's home and answered questions about ND-1 zoning and the process. In the fall of 2009, the study committee was formed, and they began moving forward with the required research and considering options for design standards. At the annual meeting in June of 2010, the study committee presented a progress report, along with several handouts, but the design standards were not decided upon. Around that time, Tom Wade took office on the Board, and encouraged the Board to facilitate the ND-1 process and attempt to determine if there was sufficient interest to pursue ND-1 zoning. The Board sent out to each property owner a letter outlining the three proposed Design Standards; a survey to determine the level of interest in ND-1 zoning; and an invitation to an informational meeting.

Perry Bozarth, 1233 Colonial Drive, said that he is the current President of TCNA. He said that he would like to concede the remainder of his time to Mr. Hart, in order for him to present the statistics with regard to the residents in support of and opposition to the proposed ND-1 zone.

Mr. Hart displayed an updated map of the neighborhood, noting the areas of support and opposition. He said that, while more property owners are now in favor, there are still some residents who are opposed. Mr. Hart stated that 75.9% of the property owners now support the proposed ND-1 zone, and 24% are opposed.

Citizen Opposition: Walt Whitlow stated that he has owned property in The Colony since the 1970s, and he had his home built there in 1989. He said that he was President of The Colony in 1994 at the time of the rezoning that resulted in the development of The Colony Unit 4.

Mr. Whitlow stated that he believes that the paperwork submitted by TCNA along with this ND-1 request reflects "extreme inaccuracies." He said that, according to his calculations, there are actually 26 accessory structures in the neighborhood that would become non-conforming upon approval of the proposed ND-1 standards. In addition, there are at least two detached garages, 1 detached carport, and approximately 15 or 20 front yard fences.

With regard to the entity known as Residents, Inc., Mr. Whitlow said that he is not a member, and he never has been. He said that, although the group claims to be inclusive, any new members must submit a request and be voted in by a group of existing members.

Mr. Whitlow stated that he was "extremely offended" when he read the TCNA reference to The Colony Covenants & Restrictions, which he believes is "one of the most racist documents" he has ever seen. He entered a copy of that document into the record of the meeting, noting that it was included as part of the ND-1 application, although "it should have been buried 60 years ago."

Mr. Whitlow said that he was a member of the ND-1 committee; but, to his knowledge, there has only been one meeting since 2009. He stated that he and several other members met at Tom Wade's house on October 2,

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2010, and had a "lively discussion," but nothing was decided. He read the following quote from Mr. Wade at that meeting: "We certainly don't have a proposal. I think, after discussing, it's going to be very difficult for the neighborhood to reach consensus." Mr. Whitlow maintains that the neighborhood has never reached consensus on this issue, noting that the one mailing, which was done in November of 2010, included a cover letter that had multiple inaccuracies designed to convince residents to vote in favor of ND-1 zoning.

Mr. Whitlow stated that The Colony has existed for 66 years, and he believes that the proposed ND-1 overlay is "the most divisive thing to ever happen to it." He said that many residents have put hundreds of thousands of dollars and work into their properties, and he does not believe that the neighborhood is at risk.

Jerry Nicholson, 1252 Colonial Drive, stated that he is a former Vice-President of TCNA. Mr. Nicholson stated that he has a severely disabled child and, before he bought his property, he researched the restrictions very carefully to ensure that he could make the desired improvements to the property. He said that he does not believe it is fair to "change the rules in the middle of the game."

Mr. Nicholson said that the fence that caused concern for many of the residents was installed because the resident does not have much of a back yard, and needed somewhere to let her dogs out; he does not believe the fence is as unattractive as some residents contend. He noted that the rear portion of the historic Hal Price Headley house lot was sold off in recent years, and "McMansions were built in back of it," but there was no public opposition at the time.

Mr. Nicholson stated that, when he first moved to The Colony, the biggest issue of concern was whether or not to form a committee to maintain the flowers in the neighborhood; now, one group of residents is "trying to impose a zone change" on their neighbors. He said that he does not believe that a "dog fence" is reason enough for the proposed ND-1 overlay zone. Mr. Nicholson added that he believes that issues like ND-1 zoning empower property owners to challenge other people's property rights.

Mr. Nicholson said that he would like to enter into the record a letter from one neighbor who did not receive a survey postcard, and he noted that he also did not initially receive a postcard.

Jennifer Hamm-Blakely stated that she has lived in The Colony for 43 years. She said that, in reviewing the ND-1 materials submitted by TCNA, she does not see overwhelming support for the proposed ND-1 zoning. Ms. Hamm-Blakely served on the TCNA Board for two years, until May of 2012. She stated that she believes that "this fight was brought to her door" partly by residents of the Chinquapin section of the neighborhood, which has its own by-laws and restrictions.

Ms. Hamm-Blakely stated that, contrary to the assertions of TCNA members, she does not believe that the ND-1 process has been transparent. She also believes that many of the relationships in the neighborhood have been destroyed, and that the process has been deeply divisive. Ms. Hamm-Blakely stated that Mr. Hart, while working the polling place on election day, spoke to residents about ND-1 zoning, and followed up by visiting residents at their homes.

Ms. Hamm-Blakely stated that one of her neighbors was recently told that the proposed rezoning was already a "done deal," and said that she hoped that was not true. She said that the information the residents received was misleading, with residents being informed at first that an approval rate of 75% of the property owners in the neighborhood was necessary for approval of the proposed ND-1 zone, then the figure was changed to 51%. Ms. Hamm-Blakely stated that she does not believe the ND-1 process has been accurate, fair, or objective.

Brandon Stinnett, 1252 Standish Way, said that he believes that Mr. Whitlow has an overwhelming amount of evidence, and he respectfully requested that the Planning Commission members consider it carefully prior to making a decision on this request.

Mr. Stinnett said that the TCNA Board did put a great deal of time and effort into the ND-1 process, but he does not believe the information submitted is entirely accurate, and he is concerned that it does not truly reflect the wishes of the property owners. He added that he is also concerned about the use of a map that depicts which owners voted in favor of or opposition to this request, since it could "open those residents up to pressure and bullying."

Mr. Stinnett displayed a pie chart he had prepared, explaining that only 24 property owners supported going forward with the ND-1 proposal in November of 2010, and not all of those 24 households agreed to all three of the proposed Design Standards. He said that the process went forward, however, with only 34% of the property owners in support. With regard to the postcard survey conducted by the staff, Mr. Stinnett said that there were only 29 votes in support, or 40% of the property owners, and four of those are in contention since the owners reside in Chinquapin rather than The Colony. He read the following into the record from the LFUCG informational brochure about the ND-1 overlay zone:

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"The initiation process requires significant neighborhood support, usually in the form of a petition with a minimum of 51% of owners' signatures."

Mr. Stinnett stated that he believes that the inaccuracies of the information submitted by TCNA, coupled with the lack of majority support, should effectively invalidate this proposal. He said that a property adjoining that owned by the head of the ND-1 committee has a fence made of heavy-duty farm wire, but it has never been mentioned as detracting from the character of the neighborhood. Mr. Stinnett said that he does not believe that the TCNA Board actually represents the entirety of the neighborhood, and that the proposed Design Restrictions would not protect the character of the neighborhood, but rather "a small interest group's aesthetic preferences."

Jeremy Ford, 2512 Versailles Road, stated that, when he purchased his property four years ago, he intended to reside there, raise a family, and construct a detached garage. He said that one of the reasons he chose that property was that it offered the opportunity to own an acre of land inside New Circle Road, which is difficult to find, and he would like to be able to make alterations to that property without restrictions such as those proposed in the Design Standards.

Mr. Ford said that, according to most of the property owners with whom he spoke about the proposed ND-1 overlay, their primary concern was the unattractive fence that was installed on one resident's property. He noted that, since approval of this request would not require the removal of that fence, he would ask that the Commission disapprove this request, and allow the homeowners to use their land as they see fit.

Stella Moore, 4017 John Alden Lane, stated that she was forced to make alterations to her home in order to accommodate the needs of her husband, who is a disabled Vietnam veteran. She said that she added an outbuilding and pool as part of an extensive, eight-month long remodeling process that was completed prior to her family moving into the home. Ms. Moore noted that none of her neighbors approached her during that process to express disapproval, or indicate that the alterations were contrary to regulations.

Ms. Moore said that her home is located across the street from the fence that has caused concern for so many residents, and she does not find it sufficiently offensive to justify animosity between neighbors. She opined that The Colony is a beautiful neighborhood, the homes are well-kept, and she does not see the need for the protection of the proposed Design Standards.

Phillip Cassidy, 1256 Colonial Drive, stated that, although his home was depicted on the map as having no vote, he is opposed to the proposed ND-1 overlay. He does not believe that there has been an effective canvass of the homeowners, and he believes that some of the information provided was misrepresented.

Mr. Cassidy opined that the proposed ND-1 overlay is "a solution in search of a problem," since The Colony is a wonderful neighborhood that has seen no out-of-character construction. He also does not believe that the fence about which many residents are concerned is offensive in any way.

Kathleen Whitlow, 1249 Standish Way, said that she moved to The Colony because she loves the neighborhood, its diversity, and the neighbors. She said that there were more residents present in opposition to this request than those who chose to speak; she asked those residents in the audience to stand.

Ms. Whitlow read into the record of the meeting the following letter, which was given to her by a neighbor:

"Had we known when we bought our house that the neighbors were going to attempt ND-1 zoning, we would have continued to look for a home elsewhere. When we moved into our home in The Colony, we did so with plans for repairs, renovations, windows, plumbing, and an addition in five to ten years when we could afford it. The addition we planned on when we bought the house is a two-story addition of a room and a garage on ground level, and a master bedroom and bath. The zoning changes would limit what we want to do for an addition. It might also mean that we have to get the okay from neighbors on a committee of what is or isn't acceptable for an addition. Those who would be on the committee are most likely those who are pushing for the ND-1 zoning.

I'd also like to say a few words about the value of people over property. When we moved into our house, our youngest son was not quite four months old. Our other boys were 22 months and five. Moving into a new house, unpacking, was no small task, especially when there were no relatives close to help. That summer, when our lawn got a little long, one of these neighbors put a sticky note on our mailbox with the words 'mow your lawn.' Not 'welcome to the neighborhood,' 'is there something we could do to help you,' but 'mow your lawn.' It brought me to tears. I was brought up in such a way that neighbors helped each other out.

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Neighbors helped families with babies or the elderly, and not made them feel bad about the appearance of their lawn at one time. I've also heard talk about a wire fence, and of the neighbor with dogs. It's been repeatedly called an 'eyesore,' and talked about as if it were some kind of a scandal. As if the fence had stolen or murdered the dignity and the beauty of the neighborhood. It's the talk, and the gossip, and the disrespect of some of the people for their neighbors. The Colony has an array of different houses with different architecture. That diversity can only live if different people continue to bring their ideas, interests, and love into the neighborhood without the restrictions of a few who think their ideas and beliefs are what is acceptable."

Ms. Whitlow said that that resident would also like it noted that she did not believe it was appropriate for the residents who worked at the polling place on election day to express their interest and lobby for ND-1 while residents were trying to vote.

Junior Odom, 1212 Colonial Lane, stated that he came to Lexington 50 years ago, and he wanted to live either in The Colony, or on The Lane. He said that he was able to purchase a house that became available in The Colony, and he has lived there for 45 years. He would like to continue to live there with the same sense of peace he has had for decades.

Frank Robey, 2504 Versailles Road, stated that he is probably the newest resident of The Colony. He said that, when he first looked at his home, he asked the Realtor for a copy of the neighborhood association's rules, since he did not want to live in an area with a lot of restrictions. Mr. Robey explained that he is a contractor, and he has seen firsthand that everyone has different ideas about what is aesthetically pleasing. When he received a copy of the original regulations, however, he noticed the following language from Article 2:

"No lot hereby conveyed nor any part thereof shall be sold or leased to any negro, or mulatto; or any organization or association of negroes or mulattos; nor shall any negro or mulatto be permitted to occupy said property, provided that this restriction shall not prevent any owner or lessee from having his negro or mulatto servant reside on the premises while employed as such."

Mr. Robey stated that he realized that the Federal government restricts such prejudices today, but there are still those in the community who seek to restrict others' freedom to do with their properties what they choose. He said that he believes that the LFUCG regulations with regard to zoning and property maintenance are sufficient now, although some legitimate issue might arise in The Colony in the future. Mr. Robey stated that the homeowners in The Colony do not want to reduce their property values; they want to ensure that everything is well-maintained and looks nice.

Commission Question: Mr. Brewer asked how Residents, Inc. is related to The Colony Neighborhood Association. Ms. Wade answered that that is the legal name of the homeowners association that requested Planning Commission initiation of this request. Mr. Brewer asked who makes up that organization, and whether all residents of The Colony are members. Ms. Wade responded that it is a voluntary organization.

Supporters' Rebuttal: Mr. Hart confirmed that Residents, Inc. is a voluntary neighborhood association; the only qualification for membership is to live in The Colony, and pay the annual \$125 dues. Mr. Brewer said that one of the citizens had referred to being ineligible for that organization, to which Mr. Hart reiterated that the only eligibility requirement is to live in the neighborhood and pay the dues. He noted that some residents choose not to participate. Mr. Brewer asked how many residents are members of Residents, Inc. Mr. Hart answered that 52 of the 72 homes are represented.

Objectors' Rebuttal: Mr. Whitlow said that Residents, Inc. was incorporated by a group of residents of The Colony in 1961. He said that, to the best of his knowledge, the by-laws of the organization have never been followed, so he does not believe that there are any legitimate or legal members of the corporation. Mr. Brewer asked how Mr. Whitlow would justify the 52 homes that Mr. Hart indicated are included in that organization. Mr. Whitlow responded that many of his neighbors have never officially joined Residents, Inc., but were just sent a bill and they paid it. He said that only a handful of individuals have ever seen the by-laws, but many of the residents believe that membership is mandatory. Ms. Wade noted that language in the by-laws indicates that fees were not to be assessed for membership.

Linda Birk, current TCNA Board member, said that she would like to clarify that Residents, Inc. is intended to represent all of the residents of The "Old" Colony, as well as four homes on Colonial Drive. She added that the by-laws specifically state that the neighborhood organization can include any resident; that dues are not obligatory; and that approximately 75% of the members choose to pay the dues. Ms. Birk explained that the neighborhood lights and landscaping are paid for with the dues.

Ms. Birk said that she was a Board member in 2008 when the ND-1 proposal was introduced, but has not served the entire time since then. She stated that former TCNA President Tom Wade was currently out of the country, but he sent a letter and asked her to state for the record that the ND-1 process was intended to be a fair, transparent, and inclusive process.

Terry Morse, 1245 Colonial Drive, said that he pays dues as a member of Residents, Inc. because he wants to do his fair share in paying for the lights and landscaping in the neighborhood.

Mr. Bozarth stated that Residents, Inc. signed an agreement with the developer, Jay Williams, to create the "new" Colony.

Staff Rebuttal: Ms. Wade stated, with regard to the proposed language referring to retaining walls, that "18 inches above the unbalanced fill in the front yard" would mean that the wall itself would be some distance higher than the ground that it holds back. She noted that the height of the wall itself is not as important as its limit above the unbalanced fill.

Chairman Question: Mr. Owens asked if Ms. Wade had any comments with regard to the number of possible non-conforming structures or fences in the neighborhood. Ms. Wade answered that she did not see Mr. Hart's fence when she was on the site, but she did see some side yard fences. Since those fences did not surround the front yards, they were not included as non-conformities, nor were the additional accessory structures that were less than 180 square feet in size.

Chairman Comment: Mr. Owens stated that the hearing was now closed.

Commission Discussion: Mr. Penn stated that he was dubious about this request when the Planning Commission initiated, and he informed Mr. Hart at the time that the neighborhood "would have a hard time selling this." He said that he was disappointed in this hearing, because "an ND-1 hearing was supposed to be about a common threat that the majority of the neighborhood is concerned about," and how the Commission can act to allay those fears. Mr. Penn said that he believes that this was the most contentious ND-1 hearing during his time on the Commission, and he does not believe that today's hearing has satisfied the intent of the ND-1 overlay.

Mr. Brewer said that he is generally a supporter of ND-1 overlay zoning, since it can help to preserve the good aspects of a neighborhood, but he believes it can only work if there is a consensus of the neighborhood. He stated that it appears that there is not sufficient support among the property owners for the proposed overlay zone, and he will not be able to support it.

Ms. Plumlee stated that she appreciates the concerns of the residents who spoke at today's hearing, but she will support the staff's recommendation of approval. She said that the Planning Commission members want to do what is best for each neighborhood; but they have guidelines in the Comprehensive Plan, as well as other regulations and by-laws, and they must follow them.

Mr. Cravens stated that he had made a comment at the time of the initiation for this request that the proposed Design Standards were so minor that they would "not be worth the effort and all the trouble" that the neighborhood went through. He said that, after he pointed out at the Zoning Committee meeting that the Design Standards did not address walls, the neighborhood "rushed to change" the Standards, even though he was actually referring to landscape walls, rather than retaining walls. Mr. Cravens stated that the proposed Design Standards for accessory structures are vague, and the Standards overall do not go far enough to actually protect the neighborhood from anything. He added that most deed restrictions prohibit accessory structures completely, and he does not believe that anyone would attempt to exceed the lot coverage requirements inherent in the existing zone.

Mr. Cravens stated that he does not like to have his rights taken away, and he cannot understand why anyone else would choose to have ND-1 restrictions imposed upon their property. He concluded that he cannot support this request.

Ms. Roche-Phillips stated that, at the recent hearing for the Ashland Park neighborhood H-1 overlay, she opined that "planners are supposed to be forward-thinking, and not reactionary to threats." She said that she supports the proposed ND-1 overlay; but she is very concerned about the process, since she is not convinced that the numbers in support are as impressive as the Commission was originally led to believe.

Mr. Penn stated that he is not against the ND-1 zone in general, but he does not believe that the neighborhood has made a case for it in this instance. He added that he has not seen the evidence that the neighborhood knows what it wants.

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Mr. Wilson stated that he shares his colleagues' opinions about the Commission's role in resolving these divisions among neighbors. He opined that the neighborhood appears to have gone through a lot of trouble for three relatively minor restrictions. Conversely, since the proposed Design Standards do appear to be minor, Mr. Wilson said that he cannot understand why the community has not been able to come to some agreement on them. He added that he is generally in favor of ND-1 zoning, but he will have to think about this request.

Mr. Owens stated that he agreed that the proposed Design Standards appear to be relatively minor. He declared the discussion closed, and asked for a motion.

Action: A motion was made by Ms. Plumlee, and seconded by Ms. Roche-Phillips, to approve MAR 2012-17 for the reasons provided by staff. The vote on this action was tied, 4-4 (Berkley, Blanton, and Mundy absent; Beatty, Brewer, Cravens, and Penn opposed).

Director Comments: Mr. King stated that there are special rules regarding tie votes for map amendment requests.

Legal Comments: Ms. Jones stated that, according to KRS 100.211, the Planning Commission is required to reconsider the item within 30 days.

Commission Questions: Mr. Owens asked if that meant that the Commission would need to take another vote on this item within 30 days. Ms. Jones read the following from KRS 100: "A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed 30 days. At the end of which, if the tie has not been broken, the application shall be forwarded to the legislative body without a recommendation of approval or disapproval."

Mr. King stated that the Commission would typically, at their next public hearing on December 13th, put this matter on the docket, but without a new hearing. Mr. Owens, as Chair, would open the matter up again for a reconsideration of the vote, and only those members present at today's hearing would be able to vote.

Mr. Brewer stated that he did not believe that this matter should be put off, but he would understand if the regulations require such action. He said that is concerned, however, about what would happen should one of the members who are present at this meeting not be present at the next. Mr. King responded that the statute does not speak to that issue.

Mr. Owens asked if another motion could be entertained at this hearing.

Ms. Roche-Phillips asked if the three members who are not present at this hearing could review the record and vote on this item at the next meeting. Ms. Jones said that she was not sure at this time; but, if it was determined that those members could vote, they would be required to review the entire hearing.

Ms. Beatty asked if the Commission could put a motion on the floor for continuation in order to allow the neighborhood association to work with the staff to address some of the concerns. Mr. Owens answered that the Commission does not have a deadline by which to consider this item, so that should be allowable. Mr. Wilson, as Parliamentarian, stated that, once a motion dies, another motion for the same action cannot be made in the same session. Under parliamentary procedure, the Commission could make a motion for reconsideration; but such a motion would have to be made by the prevailing side, and there was no prevailing side in the tie vote. Mr. Wilson explained that the only way a new motion could be considered at this point would be if it were a "significantly new" motion.

Ms. Beatty asked if a continuation would entail a significantly new motion. Mr. Wilson answered that, by his interpretation, a motion for reconsideration would be significantly new.

Mr. Brewer said that he does not believe that making a motion for reconsideration would be the best solution, and he added that he has serious concerns about permitting members to vote who were not present for the hearing. He also noted that he is concerned about the possibility that one of the members present at this hearing might not be present when the item is reconsidered.

Motion: Mr. Cravens made a motion to disapprove MAR 2012-17.

Parliamentarian Comment: Mr. Wilson stated that, according to parliamentary procedure, Mr. Cravens' motion was out of order. He said that a motion of disapproval would not qualify as "significantly different," but would be classified as a "dilatatory motion."

Discussion: Ms. Plumlee agreed that only the Commission members present at this hearing should be able to vote on this item.

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Ms. Beatty stated that she believed that the Commission should follow the advice of legal counsel and reconsider this item within 30 days.

Mr. Owens asked if a motion could be made at this point to send this item forward to the Council without a recommendation. Ms. Jones answered that it could not.

Mr. King said that this item would be placed on the Commission's December 13th agenda, since that is their only public hearing scheduled within the next 30 days. At that time, the Commission can reconsider the item, or choose to send it on to the Council with no recommendation.

Mr. Brewer asked if the Commission members' votes from this hearing would stand if they are not present at the December 13th hearing. Ms. Jones answered that that depends on the action the Commission decides to take at that time. She said that, if the decision is to not reconsider, but to send the item on to the Council, the Commission members' votes would stand. However, if the Commission comes up with some other solution at that time, she could not be sure.

Mr. Owens stated that the Commission would move on at this time, and vote on this item at their hearing on December 13th, although no new information will be presented at that hearing.

Ms. Jones stated that, because of the 30-day period, the Commission's *ex parte* rules would still apply.

Mr. Cravens said that, if one of the Commission members who voted at this hearing is not present on December 13th, it could change the will of the Commission based on attendance. Mr. Owens replied that KRS states that this is the procedure that must be followed, and reiterated that this item will be reconsidered on December 13th.

Note: Mr. Wilson left the meeting at this time.

VI. COMMISSION ITEMS

- A. **BOAR 2012-2: BOCA TIDE, LLC** – an appeal of the Board of Architectural Review's denial of a Certificate of Appropriateness for a gazebo in the front yard of property located at 372/380 South Mill Street (Council District 3).

Staff Presentation: Ms. Rackers began the staff's presentation by circulating letters from the Bluegrass Trust and the Chair of the Board of Architectural Review (BOAR) in support of the staff's recommendation on this request. She oriented the Commission to the location of the subject property at the northeast corner of South Mill and West Maxwell Streets, in the South Hill Historic District. The subject property falls within the Downtown Master Plan area, and is recommended for Retail Trade & Personal Services use. Ms. Rackers stated that the property is zoned B-1, and it is located within a mixture of commercial and residential zoning and uses. The structure on the subject property was built in the late 1800s, and was once used as an elementary school. There have been two additions to the building since its construction, the most recent in the 1940s. There is a mixture of uses in the building, one of which is a restaurant; the subject of this appeal is a gazebo which was intended for use by the restaurant.

Ms. Rackers said that the appellant, who has owned the subject property since 2004, has had several applications to the BOAR, a list and timeline of which was attached to the letter sent to the Commission from the Chair of the BOAR. The appellant is requesting that the Commission review the denial, on September 12th, by the BOAR for a Certificate of Appropriateness (COA) for the gazebo that is now located in the front yard of Dudley Square.

Ms. Rackers explained that the subject property is a corner lot, so it has two regulatory front yards: one, along South Mill Street and one along Maxwell Street. The yard along Maxwell is considered a side street side yard, although it has the appearance of, and is regulated as, a front yard for zoning purposes. It is also regulated, as such, according to the Design Guidelines since the property is located in a Historic District. The gazebo is located closer to South Mill Street than to Maxwell Street.

Ms. Rackers displayed a drawing of the subject property for the Commission, noting that the gazebo does not appear to be a very prominent structure. She displayed a photograph of the gazebo, noting that it is, however, a prominent presence in the front yard of the property. The Design Guidelines allow gazebos, pergolas, hot tubs, and swimming pools; but they are restricted to rear yard locations only. The rear yard on the subject property is minimal, since the existing structure is only a short distance from Macks Alley and the small amount of space is filled with HVAC and other equipment. Displaying an aerial photograph of the subject property, Ms. Rackers noted for the Commission the location and size of the rear yard area. She added that the side yard on the north side of the property is developed as a parking lot and access to the alley, so that yard would also not be a suitable location for the gazebo.

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Ms. Rackers stated that the gazebo was constructed during the summer months, and the appellant did not apply for a COA from the BOAR. A stop-work order was issued, at which point the appellant applied for a COA from the Division of Historic Preservation. In his presentation at the BOAR meeting, the appellant stated that he was unaware that BOAR approval was needed for something that he considered temporary, comparing the gazebo to outdoor furniture. The appellant also indicated that he was surprised that a gazebo would not be allowed. Referring to the Design Principle that recommends placement of gazebos and other such structures in rear yards, the appellant asked where the rear yard on the subject property was located, which was considered a reasonable question, given that the subject property is a corner lot and is almost completely developed. Ms. Rackers said that, at that meeting, the appellant also questioned the applicability of the Design Guidelines, opining that he did not believe that the gazebo was visually intrusive, and that he did not believe it would create a false sense of history since it obviously was not constructed in the 1800s. The appellant added that he did not believe that the gazebo was out of scale or character with the site or the South Hill Historic District. He also indicated at the BOAR hearing that, since the existing structure had been used as a school, there might have been a gazebo or similar structure on site which had been used as an outdoor classroom.

Ms. Rackers said that, at the BOAR hearing, there was a great deal of discussion between the BOAR members and the appellant with regard to his failure to apply for a COA for the gazebo. There was also discussion regarding the appropriateness of the gazebo and its location on the property. During that discussion, the appellant questioned the use of tents on the property, and why, since they are temporary structures, tents should be allowed when a gazebo would not be permitted in an Historic District. The Chair responded by saying that tents are truly temporary and easily removed, and that there is a process for their approval.

Ms. Rackers stated that the following two Design Guidelines and a Design Principle were cited in Historic Preservation's report in their presentation to the BOAR on September 12th:

"III.7.A. Landscape elements and site elements should not be visually intrusive or suggest a false sense of history.

III.7.B. Landscape elements and site elements: open space should only be developed in scale, use and character with the site and the local historic district."

She said that the Design Principles provide a framework within which the Design Guidelines should be considered. The Design Principle cited by the Historic Preservation staff in their report on the subject appeal was:

"The installation of swimming pools, hot tubs, gazebos, pergolas, etc., should be limited to rear yards."

The Historic Preservation staff's assessment of this issue is that the gazebo is visually intrusive, because of its location in the front yard; it does present a false sense of history; and it is out of character with the South Hill Historic District and the property. At the September 12th hearing, the appellant contended that, because the subject property is used for commercial purposes, it should be considered differently from residential properties with regard to the Design Guidelines. The appellant also contended that the Design Guidelines cited apply only to residential structures, because the photographs that are used to illustrate those Guidelines are all residential properties. Ms. Rackers stated that while it is true that all of those photographs are of residential properties, they are for illustrative purposes only; the Design Guidelines apply to all properties and sites within historic districts, and to all of the exterior elements on those properties. There are some Design Guidelines that are specific to commercial structures; however, they primarily address architectural elements, signage, storefronts, and other similar elements.

Ms. Rackers said that the BOAR interpreted and applied the Design Guidelines in this case, and they agreed unanimously with the staff's assessment that the gazebo was visually intrusive because of its location on the property in an area that was historically open space. They also agreed that the gazebo was out of character with the property, and it was contrary to the Design Guidelines and the cited Design Principle because it was located in the front yard, rather than in a rear yard. The Planning staff found no flaws in the interpretation of the Historic Preservation staff or the BOAR in this case. The staff agrees that the gazebo is in contradiction to the Design Guidelines, and they ask that the Commission uphold the decision of the BOAR.

Historic Preservation Presentation: Ms. Armstrong entered into the record the minutes of the September 12, 2012, BOAR meeting, as well as a letter from the Chair of the BOAR. She displayed several photographs of the subject property and the gazebo, noting that the Historic Preservation staff had received several applications this year for that property. Ms. Armstrong asked that the Commission uphold the BOAR's recommendation of disapproval.

Commission Questions: Mr. Owens asked if the appellant made any other requests for the renovation work performed on the subject property. Ms. Armstrong answered that work was done to the exterior and interior of the structure. Mr. Owens asked if the appellant obtained a COA for the exterior work. In response, Ms. Kerr said that she had distributed to the Commission members a timeline of the permitting history for the appellant's association with the subject property since 2004. She said that there have been nearly as many instances when the Historic Preservation staff had to issue stop-work orders for work being done without a COA as there were cases where the appellant applied for and obtained a COA. Mr. Owens said that the point of his question was to determine whether the appellant is familiar with the process and aware of the requirements of obtaining a COA. Ms. Kerr answered that she did not see how, given his history on the property, the appellant could be unfamiliar with the process.

Appellant Presentation: Bobby Freisberg, appellant, stated that he disagreed with the findings of the staff and the BOAR. He said that the Design Guidelines state that landscape elements should not be visually intrusive, and noted that the staff report states that, "The issue of being visually intrusive is more applicable in this case." Mr. Freisberg believed that this guideline is overbroad and has the potential to allow prejudice and personal bias to influence the staff's decisions. The staff noted that the Design Guidelines were revised in 2008 and updated in 2010 in order to "allow more flexibility in interpretation and application." He opined that that "flexibility in interpretation and application" is what is at issue in this case.

Mr. Freisberg stated that he believes that, during the BOAR hearing in September, "inappropriate and unnecessary personal comments were made or implied" by at least one Board member. He believes that those offensive comments were a "personal attack," which indicated that the BOAR members were biased against him. Such a bias is inappropriate in this type of situation, and resulted in a capricious and arbitrary decision by the BOAR. Mr. Freisberg said that, following that hearing, an individual who viewed the hearing on GTV-3 opined that it appeared that one of the members overstepped his boundaries. He added that he "objected to that member's tone toward him" at that hearing.

Mr. Freisberg said, as the Planning staff indicated in their report, most commercial buildings do not have rear yards. He said he believes that, if the Design Guidelines as a whole do not typically apply to commercial buildings, then it is unreasonable to apply them to a commercial building in this instance. At the time of the BOAR's approval of the patio on the subject property, the BOAR members realized that it is not appropriate to apply residential guidelines to a commercial building. That patio was applied for and permitted according to the Board's process, even though it was not being proposed in the rear yard of the building. Mr. Freisberg said that he never tried to intimate that the current location of the gazebo is the rear yard of the property, but that the property has no rear yard. He added that, since the property has no functional rear yard, he could never install any of the items confined by the Design Guidelines to rear yards only. He believes that that restriction is an "unreasonable interference" with his right to control his property.

With regard to Ms. Kerr's statement that the appellant should be aware of the regulations due to his ownership of the property since 2004, Mr. Freisberg said that the idea behind the installation of the gazebo came out of a conversation with the restaurant owner about a desire for "really private seating." He explained that he considers the gazebo to be temporary and "furniture-like," and that he never thought it would require BOAR approval. The gazebo does not have a permanent footing; is not attached to the ground or the permanent structure; it can be moved at will, likely within a day; and it is only intended to be in place during seasonal weather. While temporary structures are allowed to remain in place for up to 180 days at a time, Mr. Freisberg stated that the gazebo will be used only during the spring and summer months, which would result in it being in place for a shorter duration than other such temporary structures. For all of those reasons, he contends that the gazebo should be considered a temporary structure.

Mr. Freisberg said that he has owned the subject property since 2004, and he "does not just simply do things" on it. He said that, prior to beginning any project on the property, he conducts research and carefully considers the possible effects on the property and the South Hill neighborhood. Mr. Freisberg added that he was humbled by and grateful for the support expressed by the president of the South Hill Neighborhood Association at the BOAR hearing in September.

Citizen Comments: Ron Jackson, member of the Board of Architectural Review, stated that he believed that the letter from the BOAR Chair (previously submitted into the record) clearly stated the rationale for the Board's decision on this matter. He said that, in his appeal, Mr. Freisberg stated that the Board's decision to deny his appeal was based on a BOAR member's "sincere dislike and blatant hostility towards him." Mr. Jackson stated that that claim has no merit, although he admitted that he was frustrated by what he perceived as Mr. Freisberg's contempt for the BOAR. He said that, since the appellant has owned the subject property since 2004, he does hold Mr. Freisberg responsible for being aware of the Design Guidelines. The timeline submitted into the record by Ms. Kerr also indicates that Mr. Freisberg has a history of violating the regulations, then coming to the BOAR for approval after the fact.

Mr. Jackson said, with regard to the appellant's statement about a member of the public who saw the BOAR meeting on television and thought that the appellant was mistreated, that he had not been made aware of any concerns from the public regarding his treatment of Mr. Freisberg during that meeting. He stated that he and the other BOAR members harbor no ill will toward Mr. Freisberg, and they encourage him to continue improving his property on Mill Street. They only ask that he proceed under the Design Guidelines set forth by the Division of Historic Preservation.

Mr. Jackson stated that the BOAR has no bias toward any party, but seeks to do its best in considering the merits of each case with regard to the unique site boundaries, architecture, and details of each property; including deciding against the recommendation of the staff, if they deem it necessary.

With regard to Mr. Freisberg's statement that the president of the South Hill Neighborhood Association had spoken in his favor at the BOAR hearing, Mr. Jackson said that the minutes of that meeting reflect that the Board of that Association agreed to support the appellant as long as he followed proper legal channels and met the requirements of the BOAR and the H-1 overlay.

* - Denotes date by which Commission must either approve or disapprove request.

Commission Questions: Mr. Cravens asked if a fine was imposed for building without a permit when the stop work order was issued to the appellant. Ms. Kerr answered that such a fine would have been assessed when the appellant attempted to obtain a building permit, which could not have been issued without approval from Historic Preservation. She said that, if Historic Preservation issues a permit for the structure, the appellant will be assessed a fine from the Division of Building Inspection when applying for a building permit.

Mr. Penn asked why the gazebo was recommended for disapproval by the BOAR, but the patio was approved. Ms. Kerr answered that the patio has existed for many years, but she believes that appropriate permits were obtained at the time of its construction. She added that the most literal difference is that the patio is low-profile, sitting at grade, with no roof or three-dimensional members. Ms. Kerr stated that proposals on commercial properties are weighed against the same criteria as those for residential properties, but each case is considered on a case-by-case basis. She said that, over time, the subject property has been considered fairly in terms of weighing design principles against the uses needed to make it commercially viable. She said she believes that the patio goes along with that concept, adding value to the commercial use, but the gazebo crosses the line and is more intrusive.

Ms. Kerr said, with regard to the petitioner's contention that the gazebo was intended to be temporary, that there was no indication when this issue came forward that the structure would not be permanent.

Ms. Roche-Phillips asked if the gazebo was built on site, or if it was purchased whole and placed on the property. Mr. Freisberg answered that the contractor who built the gazebo constructed it off site, then separated it into three pieces and reassembled it on the subject property. He added that it is not fixed, and that there is no reason for it to be used in the winter.

Mr. Freisberg said that he had not seen the exhibit packet submitted by Historic Preservation, but he believed that some of the information presented therein was only partially true. He added that, contrary to Mr. Jackson's assertions, the comments that he made at the BOAR hearing were denigrating, he overstepped his bounds, and he could be held accountable for them.

Ms. Beatty asked if the regulations of the H-1 overlay would allow for the appellant to apply for a permit for it as a temporary structure, for use during the summer months. Ms. Kerr responded that the only structures that have been determined to be temporary are tents. She said that the gazebo sits on concrete block piers, so it does not meet the definition of a temporary structure.

Ms. Beatty asked if the appellant could possibly extend the patio seating area across the existing green space for use as extra seating during warm weather. Mr. Freisberg answered that the intent of the gazebo was not to simply add one more table, but to provide one completely intimate setting for dining. Ms. Kerr responded that a seating extension such as Ms. Beatty proposed would not require the approval of the BOAR, although there might be other regulations that would apply.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Beatty, and carried 7-0 (Berkley, Blanton, Brewer, and Wilson absent) to uphold the decision of the BOAR and disapprove BOAR 2012-2.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR OCTOBER, 2012**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 6, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	December 6, 2012
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 13, 2012 (combined meeting)
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 13, 2012 (combined meeting)
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 19, 2012
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 20, 2012

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 4:47 p.m.

TLW/TM/CT/BJR/BS/src